

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

AUSTIN EDWARD LIGHTFEATHER,

Plaintiff,

vs.

KEN PREY, Administrator, in their  
individual capacity; et al.,

Defendants.

**8:21CV211**

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff Austin Edward Lightfeather's Notice of Appeal (filing 20) and a memorandum from the Clerk of the Court requesting a ruling as to Plaintiff's authorization to proceed in forma pauperis on appeal (filing 21). Plaintiff appeals from the court's April 8, 2022 Memorandum and Order (filing 16) and Judgment (filing 17) which dismissed this action without prejudice. As stated in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot

bring a civil action or appeal a judgment in a civil action or proceeding [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. §1915(g).

The court has identified the following cases, including the present case, that were brought by Plaintiff and that were dismissed because they were frivolous and/or failed to state a claim upon which relief may be granted: *Lightfeather v.*

*Prey et al*, No. 8:21-cv-00211-RGK-PRSE (D. Neb.) (Filing Nos. 15 & 16, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on April 8, 2022, after Plaintiff failed to amend complaint); *Lightfeather v. Green et al*, No. 8:21-cv-00208-RGK-PRSE (D. Neb.) (Filing Nos. 12 & 14, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on October 12, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. Ricketts et al*, No. 8:21-cv-00165-RGK-PRSE (D. Neb.) (Filing Nos. 12 & 14, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on October 7, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. City of Lincoln*, No. 4:20-cv-03118-RGK-PRSE (D. Neb.) (Filing Nos. 112 & 113, May 24, 2021 Memorandum and Order and Judgment dismissing Plaintiff's second amended complaint for failure to state a claim and for being frivolous); *Lightfeather v. Beatrice Sun Times, et al*, No. 8:21-cv-00114-RGK-PRSE (D. Neb.) (Filing Nos. 14 & 15, May 19, 2021 Memorandum and Order and Judgment dismissing Plaintiff's complaint as frivolous).

Plaintiff requests in his Notice of Appeal that he be allowed to proceed IFP “[a]s [he] ha[s] challenged strikes on [his] (IFP) record (Case No. 8:22CV221 IFP Questioned).” (Filing 10 at CM/ECF p. 1.) Plaintiff is referring to his response to the order to show cause entered by the court in Case No. 8:22CV221 requiring Plaintiff to show cause why the cases identified above should not be considered strikes under the PLRA. (Filings 6 & 10, Case No. 8:22CV221.) In his response, Plaintiff asserts the following:

- 1) In any case it is the regard for the plaintiff to follow up with an Amend to file in their motion of in forma pauperious [sic][.]
- 2) I have filed cases that were worthy of being reviewed for trial on the merit of Justice. My cases for (LIFP) that are regarded to be heard (PLRA) under the 14th Amendment. I have the right to bring forth a civil action as a detained inmate, without financial ability or family left alive to help me in my case.

- 3) I have good standing with filing my cases with the US District Courts office;
- 4) I have brought facts and provided documents from Oregon DHHS to the US District Courts office.
- 5) I followed due process by writing the Governor, Senate, Nebraska Supreme Court; and grieving Judges when displaced on a case.
- 6) I have proven I have no incom [sic] available to pay the court fees and I am in institutional debt, -\$417.00 in debt.
- 7) I have not amended a complaint at the courts [sic] request because of denial, but have appealed by cases including 4:20CV3118.
- 8) I have provided documents showing I am in debt financially.
- 9) I have been respectful to the courts even when I become frestrated [sic].
- 10) Two cases I had stayed without the chance to refile.
- 11) I paid .83 cents of my original (IFP).

(Filing 10, Case No. 8:22CV221.)

Upon consideration, the court concludes Plaintiff has failed to show that any of the cases identified by the court as strikes were not dismissed as frivolous or for failure to state a claim. In addition, Plaintiff has not shown that he faces an imminent danger of serious physical injury. Plaintiff alleges in his Notice of Appeal that he is currently receiving an “Envaga shot [which] causes [him] blurred vision with [his] eye sight” and he has “yet to receive cancer treatment and [has] lost weight.” (Filing 20 (spelling and punctuation corrected).) While these allegations may suggest Plaintiff faces some present danger, such allegations have nothing to do with the claims alleged in Plaintiff’s Complaint (filing 1; *see also* filing 15) and are the subject of another pending action filed by Plaintiff (*see* filing 1, Case No. 8:22CV221). *See Charron v. Allen*, 37 F.4th 483, 486 (8th Cir. 2022)

(noting that “[s]ome circuits have also required ‘an adequate nexus between the claims he seeks to pursue and the imminent danger he alleges,’ that is, he must allege ‘an imminent danger of serious physical injury that is fairly traceable to a violation of law that the complaint asserts.’” (quoting *Pettus v. Morgenthau*, 554 F.3d 293, 296 (2d Cir. 2009); accord *Pinson v. U.S. Dept. of Justice*, 964 F.3d 65, 71-72 (D.C. Cir. 2020))). Accordingly,

IT IS THEREFORE ORDERED: Plaintiff is not entitled to proceed in forma pauperis on appeal

Dated this 15th day of July, 2022.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge